

Opinions and Advice

Quarterly Summary

Office of the
Maryland Attorney General



April – June 2010

OPINIONS

COUNTIES

ELECTIONS – CHARTER HOME RULE COUNTIES – COMMISSIONER COUNTIES – FEWER ELECTIONS AMENDMENT – APPLICATION OF FEWER ELECTION AMENDMENT TO CECIL COUNTY GOVERNING BODY IF COUNTY ADOPTS CHARTER HOME RULE

Cecil County is currently governed by a five-member Board of County Commissioners, who serve staggered terms under a special exception to Article XVII of the State Constitution (the Fewer Elections Amendment), which generally requires all State and County officers to be elected every four years at the gubernatorial election. The Cecil County Charter Board is currently drafting a possible charter to establish home rule for that county.

Question 1: May the staggered terms of office that now apply to the Cecil County Commissioners also be applied to members of a Cecil County Council upon adoption of a charter form of government?

Answer: Yes.

Question 2 : Alternatively, may the new charter dispense with staggered terms of office for County Council members?

Answer: Yes.

Question 3: May a Cecil County charter provide for the election of a County Executive in 2012 and every four years thereafter?

Answer: Yes.

Question 4: May a charter provide for the initial election of a County Executive in 2012 as a transitional measure, a subsequent election in 2014, and future elections every four years thereafter?

Answer: A new County charter may provide for the initial election of a County Executive in 2012, a

subsequent election in 2014, and future elections every four years thereafter.

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April 20, 2010

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FIREARMS

REGULATED FIREARMS – ASSAULT WEAPONS – WHETHER A WEAPON IS A “COPY” OF A DESIGNATED ASSAULT WEAPON AND THEREFORE SUBJECT TO THE REGULATED FIREARMS LAW

Question 1: What is the proper interpretation of the word “copies” under Maryland’s regulated firearms law the description of the weapons covered by that law? The statutory definition of “regulated firearm” specifies a list of designated assault weapons “or their copies.”

Answer: To come within the definition of “regulated firearm,” a copy of a designated assault weapon must be similar in its internal components and function to the designated weapon. Cosmetic similarity to an enumerated assault weapon alone would not bring a weapon within the regulated firearms law.

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May 24, 2010

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ADVICE LETTERS

ELECTION LAW

Campaign Finance – In-Kind Contribution Constitutional Law – Freedom of Speech

Question: Should a radio talk show featuring political discussion and hosted by a candidate or prospective candidate for State office be considered an in-kind contribution from the broadcaster to the candidate's political campaign?

Answer: Generally, no. So long as the broadcaster's actions in carrying the program are consistent with its ordinary press or broadcast functions, and not an effort by the station to promote a candidacy, airing a political talk show hosted by an aspirant for State office should not be regarded as an in-kind contribution.

Letter to
[Linda Lamone](#)
Administrator, State Board of Elections
May 24, 2010

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Local Government – First Amendment

Question: Do local governments have the ability to regulate the placing of campaign signs without violating the First Amendment?

Answer: The ability of local government to regulate campaign signs without violating the First Amendment depends on whether the regulations address government or private property and whether they treat commercial speech more favorably than noncommercial speech. Generally speaking, government may prohibit signs on its own property, and may impose restrictions on signs on private property, but may not ban campaign signs on residential property.

Letter to
[Delegate Michael D. Smigiel, Sr.](#)
June 30, 2010

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LOCAL GOVERNMENT Nuisance Abatement

Question: May the State or a county bring a nuisance action against an apartment owner concerning an apartment complex that has become run down and also has become a haven for crime and illegal drug dealing?

Answer: The State may bring an action to abate nuisances in the exercise of its police power. Counties may also exercise this power or to the extent that it is delegated to them by their charter or State statute.

Letter to
[Delegate Justin D. Ross](#)
June 4, 2010

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PUBLIC SCHOOLS Graduation Fees

Question: Article VIII, Sec 1, Maryland Constitution provides that the "General Assembly ... shall by Law establish throughout the State a "thorough and efficient System of Free Public Schools." Would a fee to participate in a graduation ceremony from a public high school violate this requirement?

Answer: Although no Maryland Court has interpreted the mandate for a "thorough and efficient system of free public schools" as it applies to the imposition of fees for certain school activities, the lack of any indications in State Board of Education regulations that a graduation ceremony is related to the curriculum and the lack of case support for any sort of property right to participate in a graduation ceremony support the view that the imposition of a fee to attend the ceremony would not violate Art. VIII, Sec. 1.

Letter to
[Delegate Luiz RS. Simmons](#)
April 2, 1010

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PUBLIC SERVICE COMMISSION
Criminal Records – Licenses

In licensing for-hire drivers, the Public Service Commission (“PSC”) is authorized to obtain and use criminal history record information (“CHRI”) from the Department of Public Safety and Correctional Services. However, while the statute states the PSC may use CHRI for licensing purposes, it also states that CHRI is confidential and may not be redisseminated.

Question: May PSC continue its current practice of openly discussing criminal records of license applicants in the PSC’s licensing orders and hearings, in light of the restrictions on dissemination of criminal history record information?

Answer: The PSC’s current practices comply with the restrictions concerning the use of criminal history record information.

Letter to
Abigail Ross Hopper, Esquire
June 15, 2010

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The Opinions and Advice Quarterly Summary summarizes formal opinions of the Attorney General. Also included are lettres of advice by Assistant Attorneys General that have been issued on the understanding that they may be made public. (Other advice provided by the OAG may be confidential under the attorney-client privilege.)

Copies of opinions may be obtained from the Attorney General’s website at www.oag.state.md.us/opinions/index.htm. There is a direct link to each advice letter at the end of its description in the electronic version of this newsletter.

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